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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/791,948

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Warren S. Taranow

TNW-10002/29

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EXAMINER

PATEL, TARLA R

ART UNIT

PAPER NUMBER

3772

MAIL DATE

DELIVERY MODE

05/30/2008

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/791,948

**Applicant(s)**

TARANOW, WARREN S.

**Examiner**

TARLA R. PATEL

**Art Unit**

3772

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 19 February 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 3,5-9,19,21 and 22 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 3,5-9,19,21 and 22 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 19 February 2008 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### *Claim Rejections - 35 USC § 103*

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 3, 5-7, are 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hassler et al. (6,397,400) in view of McDavid, III (5,797,865).

Hassler et al. discloses a flexible band (35, combination of 36-39) adapted to encircle a calf portion (see fig 4 shows 36-39 encircling the human leg) of a human leg extending entirely through the band, the leg terminating in an end portion not covered by the band (see fig 4), the band having an inner surface (inside of the splint device/band 35) spaced apart from the skin of a wearer (see fig 4) and an outer surface (outer side of splint device/ band 35) with opposing side portions (see fig 4) and a port (valve device 31) facilitating evacuation of the space so that the inner surface of the band makes intimate, slip free contact with the skin (as described in column 5 line 54- column 6 line 3 and column 5 lines 17-30, discloses a valve device 31 comprising a handle 32, which is connected to a valve body 33 and counter to the action of a valve spring 34, which allows an evacuation of interior space obviously will create intimate contact, obviously create slip-free contact with the skin) and a structure/foot loops (45) coupled to the side portion of the band, the structure including a portion that extends around and past the end portion of the leg, thereby transferring loads to the band and calf portion as

opposed to the end portion of the leg (see fig 4, element 45 is extending around and past the end portion of the leg as shown dotted line, however it is silent to what material it is made of) Fastener also can be of hook and loop type fastener (43,44 column 6 lines 4-10). The device also further discloses an intermediate layer (natural fibers and synthetic fibers, column 2 lines 1-11) between the sleeve and the skin of the wearer, which is made by non-woven and porous textured sheet or perforated (natural fibers and synthetic fibers are inherently is porous) materials.

Hassler does not disclose that foot loop/a structure extends around and past the end portion of the leg is rigid structure because it is silent to material it is made of.

However McDavid, III teaches a light weight ankle restraint having made of the plastic material which provide optimum balance between stiffness and impact strength (column 7 line 44-column 8 line 9). At the time of invention was made, it would have been obvious to one having ordinary skill in art to use the plastic material to make the foot loop/ a structure of Hassler, as taught by McDavid to better support user leg with device.

3. Claims 8 and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hassler and McDavid, III further in view of Detty (5,472,413).

Hassler and McDavid, III substantially disclose the invention, see rejection to claims 3,5-7, are 21 above; however Hassler and McDavid, III do not disclose that brace includes a thermal-insulating layer inside the sleeve.

However Detty discloses a knee and elbow brace is made having a thermal-insulating layer. At the time of the invention was made, it would have been obvious to one skilled in art to make the layer of the Hassler and McDavid's device to include the thermal insulating material, which is taught by Detty to maintain an elevated temperature at the joint of the user's body.

4. Claims 19 and 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hassler and McDavid, III further in view of Hydorn (2,545,146).

Hassler and McDavid, III substantially disclose the invention, see rejection to claims 3,5-7, are 21 above; however Hassler and McDavid, III do not disclose that rigid structure include a cast, a shoe, boot, or fin.

However, Hydorn teaches an artificial limb (1, obviously it is a cast for the limb) is rigid (column 1 lines 14-17) and upper leg section having a boot (2, column 1 lines 49-51). At the time of the invention was made, it would have been obvious to one having ordinary skill in art to use the teaching of rigid structure/ artificial limb to invention of Hassler and McDavid, as taught by Hydorn to have leg support for supporting weight of user, while the device is in use.

### ***Response to Arguments***

5. Applicant's arguments filed 2/19/08 have been fully considered but they are not persuasive. With respect to applicant arguments that the Hassler discloses the atmospheric pressure exists inside and outside of the members 36-39 and none of them surround the limb and pressure squeezes the molded bodies making the rigid structure

of the bag, but it does not establish contact with the skin, to that the examiner respectfully disagrees. As disclosed in Hassler (6,397,400) patent in column 5 lines 32-48, device enables a snug fit against the body part, therefore obviously make slip-free contact with the skin and members 36-39 as shown in figure 4 surrounds the limb that is calf of the leg. Further, Hassler discloses that evacuable support elements in order to produce the most advantageous configuration of the splint device for each application (see column 5 line 66-column 6 line 1).

6. Further, applicant argues that McDavid's apparatus comprising hinged at the ankle and freedom to flex allows only lateral support of the ankle, but does not take the weight off of the ankle, further pivoting connection will not allow full load to be taken by stirrup, to that the examiner respectfully disagrees. Applicant's argument is more specific than broad claimed limitations of "transferring loads". Further, the examiner as disclosed above used McDavid's reference to replace material plastic to device of Hassler, since Hassler failed to disclose the material of structure 45.

### ***Conclusion***

7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Habermeyer et al. (5,399,152) discloses an apparatus for treating fractures in extremities by deformable and evacuable vacuum-tight cushions having at least one valve.

8. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP

§ 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to TARLA R. PATEL whose telephone number is (571)272-3143. The examiner can normally be reached on M-T 6-3.30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Patricia Bianco can be reached on 571-272-4940. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 3772

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

TP

/Tarla R Patel/

Examiner, Art Unit 3772

/Patricia Bianco/

Supervisory Patent Examiner, Art Unit 3772